

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HERBERT LATKIN

Claim No. CU -1613

Decision No. CU-454

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

By Proposed Decision dated October 18, 1967, the Commission denied this claim for claimant's failure to meet the burden of proof in that he failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

The claimant having thereafter submitted additional evidence in support of the claim, and the matter having been duly considered, it is

ORDERED that the Proposed Decision be and it is hereby amended to read as follows:

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Claim is presented for an interest in 350 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to August 6, 1960, has been the owner of 50 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba (Vertientes-Camaguey Sugar Company of Cuba).

The record discloses that Cia. Azucarera Vertientes-Camaguey de Cuba was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

In determining the value of the interest owned by claimant in Cia. Azucarera Vertientes-Camaguey de Cuba, the Commission has considered the appraisals by Parajon e Hijo, balance sheets for the years 1957, 1958, 1959 and 1960, the annual reports to stockholders for those years, and other evidence of record submitted by the Company. On the basis of the entire record, the Commission concludes that the dollar loss sustained by Cia. Azucarera Vertientes-Camaguey on August 6, 1960, was \$66,990,148.48, and the loss per share for each of the 1,443,921 shares of common stock was \$46.3946.

Accordingly, in the instant claim, the Commission finds that claimant as holder of 50 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba suffered a loss in the amount of \$2,319.73 within the meaning of Title V of the Act, as a result of the nationalization of Cia. Azucarera Vertientes-Camaguey de Cuba by the Government of Cuba on August 6, 1960. (See Claim of Ruth Anna Haskew, Claim No. CU-0849.)

On the basis of evidence of record, the Commission also finds that claimant acquired an additional 300 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba by purchase of 100 shares on September 2, 1960 for a consideration of \$309.00, by purchase of 100 shares on September 9, 1960 for a consideration of \$270.75, and by purchase of 100 shares on December 12, 1960 for a consideration of \$270.75. The record further discloses that claimant sold 100 shares of the subject stock on April 25, 1961 for \$437.19.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. Claimant has been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$579.75 (the price he paid) as a result of the nationalization of the Cia. Azucarera Vertientes-Camaguey de Cuba on August 6, 1960.

A different question is presented, however, with respect to the 100 shares of stock purchased by claimant on December 12, 1960 and subsequently sold by him on April 25, 1961.

Ownership of stock interest in a foreign corporation on the date of nationalization vests in the owners two items of property, namely an interest in the net worth of the corporation and an interest in any claim for the nationalization. The sale of the shares in the nationalized corporation may effect transfer of either or both interests, depending upon the intention of the parties to the transaction. The burden of proving the nature of the transaction rests with the claimant. (See Claim of John A. Stiehler, Claim No. CU-2725, 1967 FCSC Ann. Rep. 70.)

In the instant claim, with respect to the 100 shares of stock sold by claimant on April 25, 1961, claimant has not alleged that he retained any interest in a claim for the nationalization of the corporation in question, nor does the record establish that any such interest was retained. Therefore, in the absence of evidence to the contrary, the Commission concludes that when claimant sold the subject stock, he transferred all rights incident thereto.

Accordingly, and for the foregoing reasons, this portion of the claim is denied. The Commission deems it unnecessary to determine other elements of this portion of the claim.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the following dates set forth hereinbelow to the date on which provisions are made for the settlement thereof:

<u>From</u>	<u>As To</u>
August 6, 1960	\$2,319.73
September 2, 1960 (the date of purchase)	309.00
September 9, 1960 (the date of purchase)	<u>270.75</u>
Total	\$2,899.48

The certification of loss, as stated below, will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that HERBERT LATKIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Eight Hundred Ninety-Nine Dollars and Forty-Eight Cents (\$2,899.48) with interest at 6% per annum from the respective dates above specified to the date of settlement.

Dated at Washington, D. C.,
and entered as the Amended
Proposed Decision of the
Commission

AUG 14 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HERBERT LATKIN

Claim No. CU - 1613

Decision No. CU - 454

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,175.50, was presented by HERBERT LATKIN and is based upon the asserted ownership of 350 shares of stock in Vertientes-Camaguey Sugar Company. Claimant has been a national of the United States since his birth in the State of Arkansas.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which

have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant states that he is the owner of 350 shares of stock in Vertientes-Camaguey Sugar Company. However, except for information concerning his nationality and his own letters and statements, claimant has submitted no documentary evidence to establish his claim.

By Commission letter of June 7, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

On July 25, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

Finally, by letter of September 15, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter; and claimant was advised that if the suggested evidence was not received within 15 days, it might become necessary to determine the claim on the basis of the existing record. No evidence in response to this correspondence has been received to date.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the

Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 18 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 31 NOV 1967

Thomas Macpherson
Clerk of the Commission

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-1613